IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10625 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANSUKHBHAI MANGUBHAI RATHOD THRO' MOTHER BHIKHIBEN M.

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The petitioner herein by way of this petition under Article 226 of the Constitution of India has challenged his order of detention passed by the Police Commissioner, Surat City on 31.7.2000 in exercise of the powers

conferred upon him by section 3(1) of Gujarat Prevention of Anti-social Activities Act 1985 (PASA Act for short). The petitioner came to be detained in pursuance of the said order from 1.8.2000.

#. The grounds of detention placed on record denotes that a crime being Crime Register No.. 94 of 2000 was registered against the petitioner before Salabtpupra Police Station, Surat under section 302,324,323 and 114 of the I.P.C. on 28.4.2000 regarding the incident took placed on 28.4.200 and the petitioner was arrested in the above said crime on 28.5.2000. The detaining authority took into consideration the investigation of the above said crime registered against the petitioner. The detaining uthority also took into consideration the statement of two witnesses who on assurance of anonymity offered statement on 3.7.2000 before the concerned authority against the petitioner. The witness no.1 narrated the incident of 23.6.2000 wherein the witness was beaten by the petitioner because the witness refused to sell articles from his shop without payment. The other incident as narrated by the other witness is of 29.6.2000 wherein the petitioner forced the witness to give the petitioner Rs.5000/- and on denying the witness was beaten by the petitioner. The detaining authority has placed reliance on the statement of these witnesses and reached to the conclusion that due to the behaviour of the petitioner, public order was disturbed and due to his fear nobody came forward to file any complaint or or making grievance against him. From the above materials, the detaining authority came to the conclusion that the petitioner was bootlegger within the meaning of section 2(c) of the PASA Act and hence the detention order under the PASA Act.

#. Learned advocate Mr. N.M.Kapadia for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. Various grounds were urged to challenge the order of detention. It clearly appears from the record that the facts of the case are squarely covered by the ratio of the decision of this court in Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995 (2) GLR 1134.

#. The detaining authority in this case has observed in the grounds of detention that in the above said crime registered against the petitioner, he was released on bail by the competent court on certain condition. The detaining has further observed that taking into consideration this fact i.e. the fact that the

petitioner was released on bail on condition, the proceedings for cancellation of bail was likely to consume more time. In the above said decision of Zubedabibi (supra) this court in para 5 observed as under:

" Looking to his interpretation which is the only permissible interpretation of the relevant provisions contained in Section 437(5) of the Code of Criminal Procedure, 1973, we must say that, there has been a clear non application of mind on the part of the authority passing the order qua the statutory requirement or the existing legal process. Any how the matter does not rest here because the learned counsel for the petitioner has been able to demonstrate a further aspect of a glaring non-application of mind on the part of the authority passing the order. Elaborating his contention, the learned counsel urges that, the subjective satisfaction recorded by the detaining authority is that, the detenu has been released in all the criminal cases shown under Annexure-1 and Annexure-2 under certain terms and conditions, and that, as no term or condition has been violated, there can be no resort to the provisions contained under Section 437(5) of the Code of Criminal Procedure; but when the conditions of bail orders are perused, it is clear that in none of the bail orders, any condition has been imposed. Naturally therefore, the could not be any eventuality under which the detenu would be able to commit the breach of the terms and conditions to be imposed by the competent court while admitting him to bail. Therefore, it appears very clearly to us that, there was a further non-application of mind on the part of the authority passing the orders qua the factual situation also. If there would be the necessary application of mind on the part of the authority passing the order such subjective satisfaction could not have been recorded. We are, therefore, satisfied that, there has not been a non-application of mind qua the legal position but qua the factual aspect of the case also. This, in our view is sufficient to vitiate the orders of detention. It could also have been urged that, if the detenu was found to be indulging in the very same activity, the competent court could have been approached with the prayer for the cancellation of the bail under section 437(5) of the Code because as amplified

above the powers of the Court for cancellation of the bail are not limited to those cases only in which the conditions have been imposed and the persons released on bail is guilty of violating the terms and conditions of bail. In view of this position, we are inclined to accept the contention coming from the learned Counsel Mr. Sanjanwala for the petitioner."

This view was again fortified by the Division Bench of this Court in L.P.A.1056 of 1999 in the case of Yunusbhai Hasanbhai Ghanchi vs. District Magistrate decided on 15.9..1999.

#. In this view of the matter, the detaining authority has failed to consider the aspect of less drastic remedy of cancellation of bail. The non application of mind by the detaining authority was qua the legal position for not resorting to cancellation of bail. But the non application of mind of the detaining authority is obvious qua the facts of the case also inasmuch as the detaining authority has observed that proceedings for cancellation of bail was likely to consume more time because the petitioner was released on bail on certain conditions. In view of the above said legal position, the order of detention in this case is required to be set aside.

#. In view of the above observations, the detention order passed by the Police Commissioner, Surat City on 31.7.200 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside.

#. The petitioner Dhansukhbhai Mangubhai Rathod is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute.

(J.R.Vora.J)

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